

IN THE MAGISTRATE COURT OF

Nicholas

COUNTY, WEST VIRGINIA

State of West Virginia

Case No. 19-M34/F-00055

v.

 Misdemeanor/ FelonyRobert Henry Baber
Defendant (Full Name)XXX XX
Social Security Number _____ Date of Birth _____

Address _____

Driver's License / Identification Number _____

City, State & Zip Code _____

Phone Number(s) _____

CRIMINAL COMPLAINT*Mag. Ct. Criminal Procedure Rule 3,4; 18 U.S.C § 921 (a) (33)*

I, the undersigned complainant, upon my oath or affirmation, state the following is true and correct to the best of my knowledge and belief. On or about 2016 July 1, 2018 through June, 2017 in Nicholas County,

West Virginia, in violation of *West Virginia Code § (cite specific section, subsection, and/or subdivision, if applicable)*

1. Fraudulent or Unauthorized use of a Purchasing Card 6-9-2c the defendant did (*state statutory language of the offense*)
2. Embezzlement 61-3-20

*See Attached Statutes

I further state that this complaint is based upon the following facts:

*See Attached Narrative

Continued on an attached sheet? Yes No

(If this complaint involves misdemeanor assault/battery, [West Virginia Code § 61-2-9] or misdemeanor domestic assault/battery, [West Virginia Code § 61-2-28], check all that apply.)

The defendant

- | | |
|---|--|
| <input type="checkbox"/> is/was the victim's spouse. | <input type="checkbox"/> is/was living with the victim as a spouse, parent, or guardian. |
| <input type="checkbox"/> is/was a parent or guardian of the victim. | <input type="checkbox"/> is a person who is like a spouse, parent., or guardian of the victim. |
| <input type="checkbox"/> has a child in common with the victim. | <input checked="" type="checkbox"/> has none of the above connections to the victim. |

Complainant (who appears before Magistrate):

B. L. Mankins

Complainant Name (Full Name)

105 Pinecrest Drive

Address

Beckley, WV 25801

City, State & Zip Code

(304) 256-6982

Phone Number(s)

Lieutenant - West Virginia State Police

Office or Title, if any

03-29-2019

Complainant Signature

On this complaint, sworn or affirmed before me and signed in my presence on this date by the complainant, the item(s) checked below apply:

Finding

- No probable cause found
 Probable cause found

Issuance

- Summons issued
 Warrant issued
 Warrantless arrest

3/29/2019

Magistrate Signature

IN THE MAGISTRATE COURT OF Nicholas COUNTY, WEST VIRGINIA

CRIMINAL COMPLAINT (CONTINUATION PAGE)

To Wit: Between July 1, 2016 and July 20, 2018, Robert Henry Baber served as the duly elected Mayor for the city of Richwood, Nicholas County, WV, until being removed from office. During that time, Mr. Baber was issued a Local Government Purchase Card, after reviewing/signing a West Virginia Local Government Purchasing Cardholder Agreement. A forensic audit revealed that he utilized his issued purchasing card for 86 transactions totaling \$6,245.17 in that time, many of which were not pre-approved or authorized by City Council. Of those 86 transactions, there were 24 transactions for which no receipt or invoice was provided to substantiate the claim, and at least 33 of which appear to have been personal in nature. Even more disturbing, is that Mr. Baber admitted to giving his purchasing card to other people to use on at least 19 separate occasions. These actions are contrary to the provisions of the West Local Government Purchasing Cardholder Agreement and West Virginia Code 6-9-2C.

On April 27, 2017, (then) Mayor Baber issued himself a Richwood city check (Paycheck #124779) for \$3,640 (gross) claiming work done during the 2 week pay period ending on July 8, 2016. Effectively, he paid himself for volunteer flood work that was done the week prior to him becoming Mayor, and his first week in office as Mayor of Richwood, abusing his authority, and converting Richwood city money for his own use, this in violation of West Virginia Code 61-3-20.

 3/29/2019

WEST VIRGINIA CODE: §6-9-2C

§6-9-2c. Fraudulent or unauthorized use of purchasing card prohibited; penalties.

- (a) It is unlawful for any person to use a local government purchasing card, issued in accordance with the provisions of section two-a of this article, to make any purchase of goods or services in a manner which is contrary to the provisions of section two-a of this article or the rules promulgated pursuant to that section.
- (b) It is unlawful for any person to knowingly or intentionally possess with the intent to use a purchasing card without authorization pursuant to section two-a of this article or the rules promulgated pursuant to that section.
- (c) Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than one year nor more than five years, or fined no more than \$5,000, or both fined and imprisoned.
- (d) A violation of this section may be prosecuted in the county in which the card was issued, unlawfully obtained, fraudulently used, used without authorization, or where any substantial or material element of the offense occurred.

 3/29/2019

WEST VIRGINIA CODE: §61-3-20

§61-3-20. Embezzlement.

If any officer, agent, clerk or servant of this state, or of any county, district, school district or municipal corporation, or of any banking institution, or other corporation, or any officer of public trust in this state, or any agent, clerk or servant of any firm or person, or company or association of persons not incorporated, embezzles or fraudulently converts to his own use, bullion, money, bank notes, drafts, security for money, or any effects or property of any other person, which shall have come into his possession, or been placed under his care or management, by virtue of his office, place or employment, he shall be guilty of the larceny thereof. If such guilty person be an officer, agent, clerk or servant of any banking institution, he shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten years. And it shall not be necessary to describe in the indictment, or to identify upon the trial, the particular bullion, money, bank note, draft or security for money which is so taken, converted to his own use or embezzled by him

And whenever any officer, agent, clerk or servant of this state, or of any county, district, school district or municipal corporation, shall appropriate or use for his own benefit, or for the benefit of any other person, any bullion, money, bank notes, drafts, security for money or funds belonging to this state or to any such county, district, school district or municipal corporation, he shall be held to have embezzled the same and be guilty of the larceny thereof. In the prosecution of any such officer, agent, clerk or servant of this state or of any county, district, school district or municipal corporation charged with appropriation or use for his own benefit or the benefit of any other person, any bullion, money, bank notes, drafts, security for money or funds belonging to this state or to any county, district, school district or municipal corporation, it shall not be necessary to describe in the indictment, or to identify upon the trial, the particular bullion, money, bank notes, drafts, security for money or funds appropriated or used for his own benefit or for the benefit of any other person.

A handwritten signature in black ink, appearing to read "William H. Davis". To the right of the signature is the date "3/29/2019".